(3)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

CRIMIMNAL APPEAL NO. 1239 /2003

Appellants : 1. Gautam Chand Baid S/o Laxmi Chand Baid, aged about 57 years, Sr. Manager Bank of Baroda, Raipur Dist : Raipur-(C.G.)

2. D.P.Dhawad S/o P.G.Dhavad, aged about 44 years, Sr.Manager, Regional Office, Bank of Baroda, Pandri Raipur.

3. S.Satyam S/o M.Appa Rao, aged about 46 years, Manager, Bank of Baroda, Durg, Dist : Durg-(C.G.)

Versus

Respondents : 1. State of Chhattisgarh, through the Collector Dhamtari, Dist : Dhamtari

2. Shri S.C. Jain S/o Ghever Chand Jain, Aged about 40 years, R/o Sadar Bazar, Dhamtari, District-Dhamtari.

CRIMINAL APPEAL U/S 341 OF THE CODE OF CRIMINAL PROCEDURE

5552/03
Filed on 22/11/03
by Shri Vijay Deshmukh Advocate
R. to D.R. (J)

(120) AFR

HIGH COURT OF CHHATTISGARH : BILASPUR

Criminal Appeal No. 1239 of 2003

Single Bench:- Hon'ble Shri Justice Dhirendra Mishra

Appellants	:-	1.	**Gautam Chand Baid**
		2.	**D.P.Dhawad**
		3.	**S.Satyam**

Vs.

Respondents	:-	1.	**The State of C.G.**
		2.	**Shri S.C.Jain**

Appellants by Shri P.Diwakar, Sr. Advocate with Shri Kunal Das, Advocate.
State/respondents No.1 by Shri A.Kachhawaha, Panel Lawyer.
Respondent No.2 by Shri V.G. Tamaskar, Advocate.

J U D G M E N T
(Delivered on २१/09/06)

This criminal appeal u/s 341 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') has been preferred by the appellants as they are aggrieved by the order dated 14.08.2003 passed by the Additional District Judge, Dhamtari in M.J.C.No. 15/03 allowing the application preferred by respondent No. 2 u/s 340 of the Code and thereby filing criminal complaint u/s 420, 467, 468 and 471/34 of the Indian Penal Code.

2. Brief facts necessary for adjudication of this appeal are that the appellants are officers of Bank of Baroda and respondent No. 2 obtained loan from the Bank and the Bank filed recovery suit for a sum of Rs. 7,79,958.23/- against respondent No. 2 and others before the learned A.D.J. The suit was signed by appellant No. 1 as power of attorney holder of the Bank whereas appellant No. 2 was the Branch Manger at the relevant time when the stamp paper on which the Letter of Acknowledgment of Debt (for brevity 'L.A.D.') was purchased and appellant No. 3 was the Branch Manger at Dhamtari on the date the suit was filed. Respondent No. 2 after service of notice filed an application of Annexure P/3 u/s 340 of the

Code alleging therein that document No. 22 in two pages annexed with the plaint is pasted over a blank stamp paper which was purchased on 13.11.1997, however, the appellants have made certain interpolation to show that the same was purchased on 13.11.1994 and the form of L.A.D. executed on 16.05.1997 has been pasted over the above forged stamp and by this act the appellants have tried to bring the above suit within the period of limitation.

3. The learned A.D.J. registered the above application as M.J.C.No. 15/2003 and conducted preliminary enquiry and recorded statements of six witnesses including the statement of respondent No. 2 and thereafter by the impugned order allowed the application and directed preparation of complaint u/s 340 of the Code for prosecution of the appellants u/s 420, 467, 468 and 471/34 of the Code vide order of Annexure P/5. In compliance of the above order complaint of Ex.P/10 has been filed in the Court of C.J.M. Dhamtari. The above complaint is registered as criminal complaint case No. 111/2004 and charge u/s 420, 467, 468, 471/34 has been framed on 08.10.2004 by the learned C.J.M., Dhamtari.

4. Learned counsel for the appellants submits that cash credit facility was given to respondent No. 2 and others when they failed to perform their obligations as the account was not made regular despite repeated requests for the same, the Bank filed above civil suit and defendants in place of contesting the suit on merits, have initiated the above proceedings on the false pretext that one rupee stamp purchased on 13.11.1997 has been fabricated with a view to bring the suit within limitation. It is argued that admittedly the document over which the L.A.D. has been executed which is Ex.P/2 is duly signed by respondent No. 2 and the date of document as shown is 16.05.1997 and respondent No.2 has acknowledged by this document that he owes a sum of Rs. 3, 31, 954.23/- only as on 16.05.1997.

5. He further submits that the above document has been signed by the defendants, borrowers and guarantors and the same has been

pasted over one rupee stamp and this stamp is also duly signed by all the defendants including respondent No. 2. It is further argued that it is alleged that fabrication in the stamp paper has been done by the appellants and thereby 13.11.1997 has been fabricated to show the purchase of stamp as 13.11.1994, with a view to bring the suit within limitation. It is submitted that if the intention of the Bank was to bring the suit within limitation, they would not have interpolated the document to show that the same was executed in the earlier date as no useful purpose would have been served by this endeavour. It is also argued that the learned A.D.J. without recording a finding that it was expedient in the interest of justice that enquiry should be made in the alleged offence with respect to the document in question given in evidence in the suit, has proceeded to inquire into the complaint and thereafter filed the complaint in the Court of C.J.M.

6. Learned counsel for the appellants submits that the complaint has been filed at the initial stage of suit without assigning any reason and without arriving to the conclusion that the document in question is forged and fabricated document after recording the evidence in the suit itself. It is submitted that learned A.D.J. by conducting ex-parte enquiry u/s 340 of the Code has virtually decided the fate of the suit by recording a finding that the document in question prima facie appears to be forged which is not permissible under the law. Learned counsel further submits that even if all the allegations made in the complaint are taken to be true, no offence is made out against the appellants as there is no allegation in the complaint that the appellants fabricated the document or that the appellants annexed the same with the suit knowing the same to be forged.

7. On the other hand, learned counsel for respondent No. 2 supporting the impugned order submits that from perusal of Annexure P/2, it is evident that the stamp in question which is a part of L.A.D. was in fact purchased on 13.11.1997 as is evident from the bare perusal of the document as also from the statement of A.W. 5 Punitram Sinha, stamp vender who has stated that he sold ten stamp papers of rupee one on 13.11.1997 to the Peon of

the said Bank. He further submits that the appellants being the power of attorney holder of the Bank, Branch Manager of the Bank at the relevant time of execution of the document and at the time of filing of the suit, are responsible for omission and commission of the Bank and this defence is not open to them that no specific overt act is attributed to them. In support of his contention learned counsel for respondent No.2 placed his reliance in the matter of ***Devi Singh Vs. State of Haryana and others*** reported in ***AIR 1997 S.C. 2778.***

8. Learned counsel for respondent No. 2 further relying upon the judgments reported in ***1999 Cr.L.J. 4325 (SC)*** in the matter of ***Trisuns Chemical Industry Vs. Rajesh Agrawal and others*** and in the matter of ***Satyinder Kaur Vs. State (Govt. of N.C.T. of Delhi)*** reported in ***1999 Cr.L.J. 4566*** submits that inherent power should be exercised under exceptional circumstances and the same should not be used to stifle the legitimate prosecution.

9. Further relying upon the judgment reported in ***AIR 2001 SC 40*** in the matter of ***State of Delhi Vs. Gyan Devi and others***, it is argued that proceedings cannot be quashed under the exercise of inherent power by the High Court before entire prosecution evidence has come on record.

10. Learned counsel for respondent No. 2 also places his reliance in the matter of ***Indian Bank Vs. Satish Chand Babbar*** reported in ***1997 (II) MPJR 193*** and submits that the practice by the Bank to forge documents only to bring its case within limitation is highly deprecable and such act amounts to committing forgery and also amounts to committing contempt of lawful authority of the Court and such acts shatter the confidence of the general public in the Bank.

11. I have heard learned counsel for the parties.

12. From perusal of the plaint annexed with this memo of appeal as Annexure P/1 it appears that defendant Bhikam Chandra Jain- the Proprietor M/s Poonam Cloth Stores, had obtained cash credit facility of Rs. 2.50 lac in 20th October 1992 and this facility was

extended to the said defendant on the personal surety of respondent No. 2 as also the other two guarantors Rajmal Jain (defendant No.4) and Ashok Kumar Jain (defendant No.5). Certain documents were executed by the borrowers as also by respondent No. 2 on 11.12.1992 and certain properties were mortgaged and all the stocks of clothes in the shop and godown were hypothecated in favour of the Bank in view of the loan. The above limit was enhanced on 14.05.1994 to Rs.3,50,000/- and certain documents referred to in paragraph 10(d) of the suit were executed in view of the enhancement of the loan limit and thereafter on 16.05.1997 the L.A.D. was executed by respondent No. 2 and other defendants. In September/October 1999 a further prayer was made by defendants 1 and 2 to enhance the limit from Rs. 3,50,000/- to Rs. 7,00,000/- and this prayer was renewed on 18.10.1999 and the limit was further extended to Rs. 7,00,000/-. Thereafter, guarantee agreement was executed by respondent No. 2 and other defendants on 21.10.1999 and when account of the defendants became irregular, the above suit was filed after legal notice dated 03.06.2002.

13. The only allegation against the appellants is that the L.A.D. dated 16.05.1997 has been pasted over the stamp of one rupee purchased on 13.11.1997 by them making fabrication in the said stamp to show that the same was purchased on 13.11.1994 and this fabrication has been done with an intention to bring the suit within limitation. This allegation finds place in paragraph 6 & 8 of the complaint, in paragraph 2 of the statement of A.W. 2. The learned A.D.J. also in paragraphs 9 & 11 of the impugned order has arrived to the conclusion that in order to bring the civil suit filed in the year 2002 within limitation, the figure 97 has been changed to figure 94 and on the basis of this finding, after passing the above order, a criminal complaint of Ex.P/10 has been drafted and sent to the Court of CJM along with order dated 14.08.2003 and other documents. The learned ADJ had also directed the CJM to proceed u/s 238 to 243(2) of the Code.

14. The powers u/s 340 of the Code is to be exercised by the Court with a great care and caution. The provision u/s 340 of the Code

are more or less procedural and the Court in a proceedings u/s 340 of the Code before directing a complaint to be lodged, must form the opinion that the person charged had intentionally given false evidence and that in the interest of justice, it is expedient that he should be prosecuted for the offence and such formation of opinion must be on consideration of material duly placed and the same was done with an intention to have some unlawful gain over the adversary. Therefore, the Court should record a finding of existences of mens rea behind the act as complained. Every false testimony does not make it incumbent on the Court to order prosecution. The Court has to exercise judicial discretion in the light of all the relevant circumstances when it determines the question of expediency. The Court orders prosecution in the larger interest of administration of justice and not due to vindictiveness or to serve the ends of a private party.

15. If the impugned order is put to above test, the order cannot be upheld for following reasons;

a) The impugned order nowhere mentions that it is expedient in the interest of justice to prosecute the appellants by invoking power u/s 340 of the Code.

b) The proceedings were drawn and preliminary enquiry was ordered to be conducted at the initial stage of the suit without considering the pleadings of the appellants/plaintiffs in the plaint.

c) The learned A.D.J. has arrived to a prima facie conclusion in the impugned order that the document (L.A.D.) has been forged to bring the suit within the period of limitation. This finding is not based on the material available on record as the allegation in the complaint u/s 340 of the Code that though the stamp paper was purchased on 13.11.1997, the figure 97 has been fabricated as 94, there is no explanation as to how by fabricating the figure 97 to 94, the suit could be brought within the period of limitation.

d) The learned ADJ has also not considered the complete pleadings present in the civil suit in which it has been pleaded that even after execution of the above deed, the defendants 1 & 2 applied for enhancement of limit from Rs. 3,50,000/- to Rs. 7,00,000/- in September/October 1999 and it was accordingly enhanced on 21.10.1999 and all the defendants executed deeds in lieu of the above enhancement as pleaded in the paragraphs 12(a) to 12(g). Thus, it was open to the parties to put up their case in the civil suit by leading evidence and thereafter only the Court could come to a conclusion whether the document in question was fabricated by the plaintiffs with an intention to derive some illegal gain.

e) The consequence of the above finding is that the fate of the suit has been prima facie decided by the learned ADJ even without affording an opportunity of hearing to the plaintiffs. Thus, it appears that the impugned order has been passed with a purpose to serve the interest of the private individuals.

f) The learned ADJ has recorded a categorical and conclusive finding that the appellants have forged the document in question and after recording such finding forwarded the complaint to the CJM directing him to proceed u/s 238 to 243(2) of the Code. However, this direction is prejudicial to the interest of the appellants.

16. The other disturbing feature in the impugned order is that after passing of the impugned order, a non-bailable warrant of arrest against the appellants was issued on 16.09.2003 and thereafter, the application preferred u/s 438 of the Code has not only been entertained by the concerned learned ADJ but also the same has been rejected vide order dated 24.09.2003.

17. The judgments relied upon by respondent No. 2 in the matter of Devi Singh Vs. State of Haryana and others (supra), the ratio of law cited above has no application in the present case as this Court is of the opinion that taking into consideration the total pleadings of the plaintiffs, it was not proper on the part of the learned ADJ to reach to the conclusion that the document in question was fabricated to bring the suit within the period of limitation at the preliminary stage of the suit. It has already been pointed out that the impugned order has been passed without recording a finding that it was expedient in the interest of justice to lodge the complaint against the appellants which is sin qua non for invoking power u/s 340 of the Code.

18. Reliance of respondent No. 2 in the matter of Trisuns Chemical Industry Vs. Rajesh Agrawal and others (supra) and Satvinder Kaur Vs. State (Govt. of N.C.T. of Delhi) (supra) has also no application in the instant case as both the cases relate to quashing of First Information Report while exercising powers u/s 482 of the Code whereas in the present case the appellants had preferred an appeal u/s 341 of the Code against the order passed by the learned trial Court u/s 340 of the Code and while exercising the appellate power u/s 341 of the Code, it is open and desirable that all the material available before the trial Court are re-appreciated and therefore the above citations are no application in the present case. Thus, in the aforesaid reasons, the case of the State of Delhi Vs. Gyan Devi and others (supra) is also not applicable in the present case.

19. Shri Tamaskar, learned counsel appearing for respondent No. 2 has heavily relied upon the judgment delivered in the matter of Indian Bank Vs. Satish Chand Babbar (supra) and argued that the Bank should not forge document to bring their suit within limitation. However, in the present case as already held in the foregoing paragraphs, the learned ADJ has not considered the total pleadings available on the plaint which goes to show that the date of the execution of the document in question has been shown as 16.05.1997 in the pleadings and the Bank could not get any benefit by antedating the document to 94 in the matter of limitation. Even otherwise, after execution of this document, limit was further

enhanced by the Bank on the prayer of respondents and further documentation has taken place to secure the subsequent enhancement and thus in the light of the above pleadings, the very ground of the complainant that the document was forged to bring the suit within limitation is washed away.

20. In the latest judgment of the Hon'ble Apex Court reported in ***(2005) 4 SCC 370*** in the matter of ***Iqbal Singh Marwah and another Vs. Meenakshi Marwag and another*** while dealing with bar contained u/s 195 of the Code for taking cognizance of offences referred to u/s 195(1)(b) of the Code, it has been held that complaint u/s 340 of the Code shall be made by the Court only if it is expedient in the interest of justice and not in other case and this expediency will normally be judged by the Court by weighing not the magnitude of the injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice.

21. However, in the present case the learned A.D.J. after conducting enquiry at the initial stage has passed the impugned order without recording any such finding as had already been discussed in the foregoing paragraphs and lodged complaint u/s 420, 467, 468, 471/34 of the IPC against the appellants which is on the face of it an abuse of process of law, which furthers the interest of private party.

22. Thus, on the basis of aforesaid discussions, the appeal preferred by the appellants is allowed. The order impugned is set aside at this stage. The complaint filed by the learned A.D.J. in the Court of C.J.M. in pursuance of the above order is directed to be withdrawn. However, it is made clear that it shall be open to the trial Court to proceed u/s 340 of the Code after the conclusion of the trial Court if the Court is of the opinion that it is expedient to do so in the interest of justice.

Sd/-
Dhirendra Mishra
Judge